

## **EXHIBIT 10**

**TO THE DECLARATION OF STEVEN  
CHERNY IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION TO  
EXCLUDE CERTAIN OPINIONS OF  
DEFENDANTS' EXPERTS PAUL K.  
ARNTSON, LAUREN R. KINDLER, AND  
RANDY MEIROWITZ**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AU NEW HAVEN, LLC, AND	:	
TRELLEBORG COATED SYSTEMS	:	
US, INC.	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	
vs.	:	15-CV-034110-GHW
	:	
YKK CORPORATION, ET AL	:	
	:	
Defendant.	:	

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TRANSCRIPT of testimony of LAUREN KINDLER as  
taken by and before PATRICIA A. PUCCIARELLO, a  
Shorthand Reporter and Notary Public of the State  
of New York at the Law Offices of COOPER & DUNHAM,  
LLC, 30 Rockefeller Plaza, 20th Floor, New York,  
New York on Friday, September 29th, 2017,  
commencing at 9:39 a.m.

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Kindler - direct

1 A. I wouldn't characterize it as  
2 unsuccessful, because it appears that there were  
3 multiple times where Mr. Press agreed to sign  
4 something and then ultimately didn't sign it.  
5 Whereas in some case -- in other cases you see  
6 situations where both parties are saying no way,  
7 no how.

8 There seemed to be some agreement  
9 between the parties over certain offers and it  
10 just never got consummated. So I can agree that  
11 it was never consummated, but they appear to have  
12 reached agreement along the way.

13 Q. And these offers back and forth  
14 involve Exclusive Output Contracts that YKK never  
15 agreed to?

16 A. Yes, at times, yes.

17 Q. And so, you know the License  
18 Agreement says the only way it can be amended is  
19 by writing signed by both parties?

20 A. Yes.

21 Q. And you understand that there has  
22 never been an amendment to the License Agreement  
23 signed by both parties, is that correct?

24 A. Yes

25 Q. So isn't it true that the one

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Kindler - direct

1 scenario that we know was not used, the but for  
2 world, is the parties negotiating a new royalty  
3 structure in 2006?

4 A. I don't think I understand the question.  
5 I mean, in all cases we arrive at litigation  
6 because an agreement wasn't reached. That  
7 doesn't mean that we aren't required to come up  
8 with a hypothetical agreement or situation that  
9 would have been reached. In my opinion, it would  
10 have been a reasonable royalty negotiation.

11 Q. In how many other cases have you  
12 expressed an opinion that a reasonable royalty  
13 negotiation was, in the but for world, on a  
14 breach of contract claim?

15 A. I think in at least one other case.

16 Q. And what was the name of that case?

17 A. Can I consult my CV?

18 Q. Sure.

19 A. So it would have been the Keldar versus  
20 Mayborn case, which involved -- I was retained as  
21 an expert, damages expert for Mayborn, the  
22 defendant. It involved breach of contract  
23 relating to the Tommy Tippy Perfect Prep Machine  
24 for formula warming.

25 Q. Have you ever given an opinion what

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Kindler - direct

1 a reasonable royalty negotiation would have been  
2 in the but for world in connection with a breach  
3 of contract claim on behalf of a plaintiff?

4 A. No, I think I've only been retained on  
5 behalf of a plaintiff in the case we discussed  
6 earlier this morning, the false advertising case,  
7 and then in another patent infringement case that  
8 did not involve breach of contract claim.

9 Q. All of your other retentions were on  
10 behalf of defendants?

11 A. Well, I'm sorry. I should -- I misspoke.  
12 Not in terms of retention, but in terms of  
13 situations where I actually gave either  
14 deposition testimony or trial testimony.

15 Q. So those were all for defendants  
16 except for the exceptions you just noted?

17 A. No, the other one was Easton, which was  
18 also patent infringement, plaintiff's side.

19 Q. Okay. And -- but did that involve  
20 you giving an opinion about a reasonable royalty  
21 being in the but for world in a breach of  
22 contract claim?

23 A. No, no. In no -- none of those situations  
24 was there a breach of contract claim involved in  
25 situations where I was retained by the plaintiff.

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1           Q.       Now, if you look at paragraph 157 of  
2       your report, the opinion you give is that the  
3       likely outcome of the hypothetical negotiations  
4       between Uretex and YKK would be a nonexclusive  
5       freedom to operate within the excluded markets  
6       licensed to the Uretex patents, correct?

7       A.       Yes.

8           Q.       Why were you of the opinion that in  
9       the but for world Uretex and YKK would have  
10      negotiated a nonexclusive license to YKK?

11      A.       Well, in this situation, particularly in  
12      patent infringement you have to assume that.  
13      That's just a requirement. I can't assume a  
14      patent infringement case that it's going to be an  
15      exclusive license.

16           Q.       But I'm asking you, and if I wasn't  
17      clear, I apologize, you give the same opinion  
18      with respect to the contract but for world and  
19      the patent infringement but for world?

20      A.       Correct.

21           Q.       So my questions are now limited to  
22      the breach of the license agreement but for  
23      world. Okay?

24                    Why do you assume that it would be a  
25      nonexclusive license that the parties would have

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